No. 83-814

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BERRY & GORE, LTD.,

Petitioner,

v.

ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent Administrator's brief opposing the present Petition erroneously asserts that the Illinois Supreme Court's Order of August 18, 1983, denying Petitioner's motion to quash the subpoena duces tecum issued by the Clerk of that court, is not a final judgment or decree, and hence is not appealable under 28 U. S. C. § 1257(3). At issue in the present proceeding is the scope of the Administrator's authority to embark upon an unauthorized fishing expedition by conducting

a general audit of a law firm's bank accounts, absent express authorization for such action or due process safeguards to prevent its abuse. Resolution of this federal issue is conclusive with respect to the course of the Administrator's investigation in the proceedings below. If Petitioner prevails, the Administrator will not be allowed to conduct his anticipated audit. Accordingly, the Order of the Illinois Supreme Court meets the first exception to the requirement of finality discussed by this Court in *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 479 (1975). And, as noted by the Court in *Cox Broadcasting, id.*, "To dismiss the appeal would not only be an inexcusable delay of the benefits Congress intended to grant by providing for appeal to this Court, but it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets," *quoting, Mills* v. *Alabama*, 384 U. S. 214, 217-18 (1966).

Moreover, the present proceeding does not involve a motion to quash a subpoena duces tecum issued by a grand jury in a criminal investigation, as in *Cobbledick* v. *United States*, 309 U. S. 323 (1940). Rather, this is an attorney disciplinary proceeding raising distinct considerations. For example, unlike *Cobbledick*, Petitioner here does not have the option of facing a contempt citation for failure to comply with the subpoena. Instead, Illinois Supreme Court Rule 754, *Ill. Rev. Stat.* ch. 110A, § 754 (1983), merely provides: "The Administrator . . . may report to the Court the failure or refusal of any person . . . to produce the items specified in the subpoena *duces tecum*." Given the discretionary nature of this framework, coupled with the complete discretion of the state court over the disciplinary process, it is possible that a meaningful review by this Court of a substantial federal question would be forever precluded if not undertaken at this juncture.

Finally, the right involved is, in essence, "separable from and collateral to" the merits of the underlying investigation. *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 546 (1949).

The Order of the Illinois Court denying Petitioner's motion finally determined the merits of Petitioner's claim that the compliance with the subpoena would deprive it of rights protected by the Fourth and Fourteenth Amendments without any necessary procedural safeguards. *See, e.g. National Socialist Party* v. *Village of Skokie,* 432 U. S. 43, 44 (1977). As noted in *Cox Broadcasting, supra:* "In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation." 420 U. S. at 483.

In sum, this court has repeatedly observed that the final-judgment rule is not to be administered in a mechanical fashion and that circumstances exist in which a departure from this requirement for purposes of federal appellate jurisdiction is warranted. *See, e.g. Cox Broadcasting, supra,* 420 U. S. at 477; *Radio Station WOW, Inc.* v. *Johnson,* 326 U. S. 120, 124 (1945). Here, the Illinois Supreme Court has peremptorily upheld the Administrator's authority to engage in a completely unauthorized fishing expedition of petitioner's records, *sans* the restrictions of any due process safeguards and in violation of Petitioner's substantial rights under the Fourth and Fourteenth Amendments. This is a circumstance which warrants immediate review.

Respectfully submitted,

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